



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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April 29, 1999
AO-99-06

Linda B. Day
Superintendent of Schools
Berkshire Hills Regional School District
Main Street
Stockbridge, MA 01262

Re: Dissemination of materials through school district web sites

Dear Superintendent Day:

This letter is in response to your March 16, 1999 letter to Denis Kennedy requesting an advisory opinion regarding use of the Berkshire Hills Regional School District web site.

You anticipate a Proposition 2 ½ ballot question or questions within the district regarding financing of a school renovation or construction project in the future. No ballot question election is scheduled in any of the district's towns at this time.

You would like to post information on the web site relating to the condition of school buildings and proposals for the construction of a new facility. Specifically, you plan to put information on the site pertaining to the condition of school buildings, proposals for the construction of a new K-8 facility, tax rate impacts, and schematics. In addition, you are considering placing a "video" tour of the buildings on the site.

I assume that the information on the web site would contain no reference to the anticipated ballot question.

Questions

- (1) May the school district put information on its web site pertaining to the conditions of school buildings, proposals regarding the construction of a new K-8 facility, tax rate impacts, and schematics?
- (2) May the web site contain a "video" tour of each of the buildings?
- (3) If the web site may contain a "video" tour, may school resources be used to film the video and may school employees provide the narration?



Answers

Yes, to each question.

Discussion

1. The Anderson opinion

In Anderson v. City of Boston, 376 Mass. 178 (1978), appeal dismissed, 439 U.S. 1069 (1979), the Supreme Judicial Court concluded that the City of Boston could not appropriate funds, or use funds previously appropriated for other purposes, to influence a ballot question submitted to the voters at a State election. The court stated that the campaign finance law demonstrates an intent "to assure fairness of elections and the appearance of fairness in the electoral process" and that the law should be interpreted as prohibiting the use of public funds "to advocate a position which certain taxpayers oppose." 376 Mass. at 193-195.

Accordingly, this office has concluded that governmental entities may not expend public resources¹ or contribute anything of value in support of or opposition to a ballot question. In addition, public resources may not be used to distribute commentary regarding a ballot question unless expressly authorized by state law. See IB-91-01.

2. Before the question is on the ballot

The prohibition described in Anderson does not apply "in connection to . . . issues which are debated in an open forum such as a town meeting." See AO-93-07. Once a question has been placed "on the ballot,"² however, governmental resources may not be used to distribute informational or advocacy materials regarding the ballot question absent specific statutory authority. See IB-91-01. The use of public resources to distribute information *prior* to a question being on the ballot may also be subject to the campaign finance law. Specifically, using public resources to urge voters to vote "yes" or "no" on an anticipated override question would be inconsistent with the campaign finance law. Id.

You have stated that the towns comprising the Berkshire Hills Regional School District have not yet placed a question on the ballot regarding school renovation or construction. There is no reference to an anticipated election in the information posted on the web site. Therefore, at this time the campaign finance law would not bar the use of public resources to post the information on the web site.

¹ Public resources include, but are not limited to: staff time, office space, stationery and office supplies, office equipment such as telephones, copier and fax machines and computers, as well the use of a state, county or municipal seal. Even the occasional, minor use of public resources for a political purpose is inconsistent with state law and should be avoided.

² A question is "on the ballot" when the selectmen in at least one of the towns vote to place the question before the voters in an annual or special town election.

3. After the question is on the ballot

In many respects, a town's web site is similar to a town's bulletin board. Posting information on the web site therefore complies with the campaign finance law if posting the information is consistent with the official responsibilities of the official posting the information, and is not primarily done to influence an election. See IB-92-02 (stating that appointed public officials "may act or speak out about a ballot question in their official capacity during work hours if in doing so they are acting within the scope of their official responsibilities").

Even after the question is placed on the ballot, information related to a school construction ballot question may be posted or remain on the web site **assuming the information does not refer to an election or otherwise appear to be intended to influence the election.** See AO-95-33 and AO-96-01 (a town board may vote on a resolution regarding a ballot question and may, if consistent with town practice, post the resolution on the town hall's bulletin board). Posting the information on a publicly funded school web site, unlike mailing or emailing the information to voters, would not be inconsistent with Anderson. This conclusion is not affected by the fact that you may use school resources, such as cameras and staff for narration purposes, to prepare a video to be placed on the web site.

This opinion is issued on the basis of your letter and solely within the context of the campaign finance law. I encourage you to contact us in the future if you have further questions regarding any aspect of the campaign finance law.

Sincerely,

A handwritten signature in black ink that reads "Michael J. Sullivan". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Michael J. Sullivan
Director